

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 42.17.101, 42.17.111,)	PROPOSED AMENDMENT AND
42.17.131, 42.17.134, 42.17.222,)	REPEAL
42.17.602, 42.17.603, and 42.17.605)	
and the repeal of ARM 42.17.219)	
pertaining to withholding and)	
estimated tax payments - general)	
withholding and mineral royalty)	
withholding)	

TO: All Concerned Persons

1. On December 11, 2014, at 3 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on December 1, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

42.17.101 DEFINITIONS The following terms pertain to this chapter.

(1) and (2) remain the same.

~~(3) "First purchaser" means the first person to pay for production after it is extracted from deposits in this state. Generally the first purchaser is an arms-length entity that pays a market price.~~

(4) through (10) remain the same, but are renumbered (3) through (9).

~~(11)(10) "Remitter" "Remitter"~~ means the individual, entity, or trust obligated under a mineral lease to pay royalties to the royalty owner or his assignee, to deliver minerals to a purchaser to the credit of such royalty owner or his assignee, or to pay a portion of the proceeds of the sale of such minerals to the royalty owner or his assignee.

~~(12)(11)~~ "Reporting forms" includes, but is not limited to:

(a) ~~form M-1~~ is Form M-1, the Montana Withholding Tax Payment ~~Form~~ form;

(b) ~~form MW-3~~ is Form MW-3, the Montana Annual Wage Withholding Tax

Reconciliation form; and

- (c) ~~federal form W-2 is Form W-2~~, the federal wage and tax statement form;
- (d) Form RW-1, the Mineral Royalty Withholding Tax Payment Voucher form;

and

(e) Form RW-3, the Montana Annual Mineral Royalty Withholding Tax Reconciliation form.

(13) remains the same, but is renumbered (12).

~~(14)(13) "Take in kind" means someone other than the well an operator or non-operator takes their share of the who elects to receive production and does not sell it with the party(s) contracted with the operator. The operator might want to sell gas to one purchaser, but another company wants to sell or use their portion of the gas for another purpose. Thus, they "take in kind" in lieu of proceeds from the sale of production.~~

AUTH: 15-30-2547, 15-30-2620, MCA

IMP: 15-30-2501, 15-30-2538, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.101 to strike the definition of a term not currently used in chapter 17 and to renumber the following sections in the rule accordingly. The department also proposes correcting the spelling of the term "remitter" and amending the definition for "reporting forms" to add consistency to the format and to include the names and descriptions of two additional withholding reporting forms. The department further proposes amending the definition of "take in kind" for better clarity.

42.17.111 WHO MUST WITHHOLD MONTANA INCOME TAX AND WHO IS SUBJECT TO WITHHOLDING (1) Every employer residing in Montana and every nonresident employer transacting business in Montana is required to withhold Montana state income tax from wages paid to an employee for services rendered within Montana ~~and for services rendered outside Montana by an employee who is a resident of Montana.~~

(2) through (6) remain the same.

(7) Wages paid to a resident of North Dakota for personal services rendered within Montana are not subject to withholding provided the employee has filed a ~~Form NR-2, Certification of North Dakota Residence~~ Form MT-R, Reciprocity Exemption from Withholding, in accordance with ARM 42.17.134.

(8) remains the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.111 to delete a provision in (1) not supported by statute. The department further proposes amending (7) to update a form name to keep the rule current.

42.17.131 EMPLOYEE'S WITHHOLDING ALLOWANCES (1) For purposes of determining the employee's withholding allowances, the amount claimed for

Montana may be different than the amount claimed on the federal ~~form~~ Form W-4, Withholding Allowance Certificate, reported on the line stating "total number of allowances you are claiming", furnished by the employee to the employer for federal withholding tax purposes. The department may determine whether the amount claimed on the federal ~~form~~ Form W-4 should be adjusted. The department does not provide forms for this purpose. The department has determined that the federal child tax credit that allows extra allowances for federal withholding is not allowed for Montana purposes when determining the number of allowances for Montana withholding.

(2) remains the same.

(3) If an employee fails or refuses to provide the number of allowances on federal ~~form~~ Form W-4 reported on the line stating "total number of allowances you are claiming", the employer shall withhold, for Montana purposes, on the basis of zero withholding allowances.

(4) Any change to the "total number of allowances you are claiming", on federal ~~form~~ Form W-4 for federal purposes, including federal re-determinations of allowances, automatically changes the number of allowances for Montana purposes unless the allowances have been set at a fixed number by the department under (5). If a re-determination allows extra allowances for the federal child tax credit for federal purposes, these extra allowances will not be allowed for state purposes.

(5) An employer is required to provide a copy of any federal ~~form~~ Form W-4 on which an employee has claimed more than ten withholding allowances to:

Department of Revenue
P.O. Box 5835
Helena, Montana 59604-5835.

~~(a) Each such certificate is to be provided at the same time and in the same manner as such certificate is required to be provided to the IRS under 26 CFR 37.3402-1.~~

(b) and (c) remain the same, but are renumbered (a) and (b).

(6) When adjusting claimed withholding allowances for an employee under (5), the department shall consider:

(a) through (e) remain the same.

(f) annuity plan contributions; ~~and~~

(g) residency; and

(h) federal Form W-4, personal allowances worksheet.

(7) remains the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.131 to strike an outdated section from (5), because the federal government no longer requires filing of Form W-4 except upon request. The department further proposes adding Form W-4, the personal allowances worksheet, to (6) as an item to be considered in making a determination of the correct number of exemptions for

Montana withholding purposes. The department also proposes correcting punctuation and capitalization errors in the rule.

42.17.134 RECIPROCAL AGREEMENT - NORTH DAKOTA (1) remains the same.

(2) A North Dakota resident performing services in Montana for compensation must annually provide ~~Form NR-2, Certificate of North Dakota Residence~~ Form MT-R, Reciprocity Exemption from Withholding, to their employer before the employer may discontinue withholding on compensation earned in Montana. The certificate must be filed with the employer within 30 days of the start of employment. The certificate is valid only from the date filed to December 31 of the year in which filed. A new certificate to renew the exemption from withholding must be filed with the employer by the last day in February of each year. The certificate is rendered invalid if the employee changes his or her residence to any state other than North Dakota.

(3) remains the same.

(4) A copy of the employee's ~~Form NR-2~~ Form MT-R must be submitted by the employer to the department within 30 days of when it is provided to the employer in the case of new employment, or by March 31 if the form is renewing an exemption.

(5) remains the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, 15-30-2509, 15-30-2621, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.134 to update a form name in (2) and (4) to keep the rule current.

42.17.222 ~~DEMAND OF PAYMENT OR REPORTS FILINGS AND~~ PAYMENTS DUE IF EMPLOYER TRANSFERS OR DISCONTINUES BUSINESS

(1) ~~The department may demand that an~~ An employer must file a form Form MW-3 with applicable federal ~~form~~ Form W-2s and submit payment within 30 days after ceasing to be an employer, as defined in 15-30-2501, MCA, or ceasing activity. Ceasing activity includes, but is not limited to:

(a) through (2) remain the same.

AUTH: 15-30-2620, MCA

IMP: 15-1-216, 15-30-2501, 15-30-2504, 15-30-2505, 15-30-2506, 15-30-2507, 15-30-2509, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.222 to add relevant language from ARM 42.17.219, which is proposed to be repealed. The intent is to eliminate redundancy and locate similar content together in a single rule. The department further proposes making capitalization corrections and updating the rule title and implementing citations to reflect the combined content of the rule as amended.

42.17.602 CLAIMING THE CREDIT FOR TAX WITHHELD (1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit may be claimed for the tax withheld on a Montana individual income tax return or a Montana corporation license corporate income tax return, with a copy of Form 1099-MISC attached, to substantiate the amount claimed.

(b) remains the same.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to ~~its share of federal distributable net income~~ the amount of royalty income that the estate or trust includes in Montana taxable income. ~~The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. To claim the credit, the beneficiaries must maintain a copy of federal Schedule K-1 and claim credit for the amount shown by the fiduciary as their percentage share of the tax withheld from Montana mineral production payments.~~ A beneficiary is entitled to a credit for the tax withheld in proportion to the amount of royalty income the beneficiary must report on their Montana individual income tax return.

(d) and (e) remain the same.

AUTH: 15-30-2547, MCA

IMP: 15-30-2539, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.602(1)(a) to change the name "corporation license tax" to "corporate income tax," to match the term now used in statute.

The department further proposes amending (1)(a) to require a copy of Form 1099-MISC to support the amount of credit being claimed. Now that the department has the ability to receive Form 1099-MISC electronically, this will assist in the verification of the amount claimed for mineral royalty withholding.

The department also proposes amending (1)(c) to clarify that mineral royalty withholding amounts can be claimed in proportion to mineral royalty income reported by an estate or trust, and that mineral royalty withholding can be claimed by beneficiaries in proportion to the mineral royalty income reported on their individual returns.

42.17.603 APPLICABLE THRESHOLDS - CHANGE OF OWNERSHIP - PUBLICLY TRADED PARTNERSHIPS - NONPROFIT ORGANIZATIONS - EXEMPT ROYALTY OWNERS (1) There is not a requirement to withhold from

payments to royalty interest owners if the producing entity's production does not exceed 100,000 barrels of oil and 500 million cubic feet of gas, based on the previous three calendar years' average production reported to the Montana Board of Oil and Gas Conservation. For example, the department will calculate whether payments for an entity's production are subject to withholding from their royalty interest owners for ~~2013~~ 2015 by averaging the production numbers for calendar years ~~2009, 2010, and 2011,~~ 2012, and 2013 and comparing this average to the production exemption limits.

(2) and (3) remain the same.

(4) If a person who is required to withhold on behalf of their royalty interest owners ~~sells~~ sold their mineral interests during the year and ceases to be the remitter, the person ~~that~~ who acquired the mineral interests becomes the remitter and must continue to withhold 6 percent of the net royalty payments from the royalty interest owners subject to the withholding requirements of 15-30-2538, MCA.

(5) through (7) remain the same.

(8) The person described in (7) may not be required to withhold net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the net royalty payments are immaterial.

(a) The department has defined an entity that has immaterial net royalty payments as an entity that has production amounts for minerals, other than oil and gas, with a value less than \$5 million. The only filing requirement for this type of entity is the filing of the Form RW-3 by February 28 of the following year along with a listing of all royalty recipients. The \$5 million value will be based on a three-year average of production value reported to the department's Business Tax and Valuation Bureau. For example, the department will calculate whether an entity is required to withhold from ~~their~~ its royalty interest owners for ~~2013~~ 2015 by averaging the valuation reported for ~~2009, 2010, and 2011,~~ 2012, and 2013.

(9) through (13) remain the same.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2541, 15-30-2542, 15-30-2543, 15-30-2544, 15-30-2545, 15-30-2546, 15-30-2547, 15-30-3540, 15-31-102, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.603 to update the years used in the examples so they are more relevant and understandable and to make a grammatical correction in (4).

42.17.605 FILING REQUIREMENTS (1) through (1)(c) remain the same.

(d) On or before January 31 of each year, Form 1099-MISC, Miscellaneous Income, or Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, shall be furnished by the remitter to each person who ~~is entitled to a credit for taxes withheld~~ has received royalties in each calendar year before January 31 of each year;

(e) through (3) remain the same.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2541, 15-30-2543, 15-30-2544, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.17.605(1) to make the language consistent with other sections which refer to royalties received instead of credit for taxes withheld. As proposed, the amendment should help ensure that a recipient of royalties receives a Form 1099-MISC, even if amounts are not withheld. The department further proposes revising the sentence structure of (d) for better clarity regarding the timeline.

4. The department proposes to repeal the following rule:

42.17.219 FILINGS AND PAYMENTS DUE AFTER TERMINATION OF
WAGE PAYMENTS

AUTH: 15-30-2620, MCA

IMP: 15-30-2501, 15-30-2504, 15-30-2505, 15-30-2606, 15-30-2507, 15-30-2509, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.17.219 to remove a redundancy and locate similar content together in a single rule. As proposed to be amended, ARM 42.17.222 will cover the subject matter for both rules.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than December 22, 2014.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the Administrative Rules link under the Other Resources section located in the body of the homepage, and open the Proposal Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 10, 2014.